

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,907

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her coverage under medicaid for a commercial food thickener. The issue is whether such a product is covered under the pertinent regulations.

FINDINGS OF FACT

The petitioner has furnished information to the Department that describes her situation and her request for medicaid coverage for a commercial food thickener. The following is a letter from her doctor dated August 11, 1995:

[Petitioner] is a 34-year-old woman with severe mental retardation and a history of aspiration, including at least one episode of aspiration pneumonia. At the present time she chokes, not only on her food, but on saliva as well. Her cough reflex is not very good to help prevent this. A recent barium swallow revealed that she would aspirate specifically on thin liquids. For this reason, it is very important that she thicken her fluids and foods using a substance called Thick It which is added to decrease her episodes of aspiration. For this reason, the Thick It is extremely important to reduce her aspiration and the risk of aspiration pneumonia.

The above information was followed up in a letter submitted by the petitioner's speech/language pathologist, dated September 8, 1995, which reads as follows:

I am writing regarding [petitioner], who was seen by this department on April 24, 1995. She was referred to our department, for evaluation of swallowing function, following admission to Fletcher Allen Health Care, for aspiration pneumonia.

[Petitioner] has a long standing history of choking associated with eating, and respiratory difficulties which may have been secondary to aspiration. During her hospitalization, [petitioner] was given a complete evaluation of swallowing, including a modified barium swallow (MBS) study, which indicated the occurrence of silent penetration of thin liquids into the laryngeal vestibule. As a result of this

evaluation, it was recommended that she thicken thin liquids, which resulted in elimination of the penetration of liquids, into her airway during swallowing.

A commercial thickener was recommended and prescribed by her physician, [name]. The reasons for use of a commercial thickeners are the following.

1. The use of a thickener allows maintenance of adequate hydration, while decreasing the risk for respiratory difficulties which would result in further hospitalizations.
2. Non-commercial thickeners (i.e. corn starch) bind with water, do not provide adequate hydration and can result in gastrointestinal problems such as constipation.
3. Use of non-commercial thickeners often results in inconsistent textures and continued aspiration, while the "recipes" available with the commercial thickeners allow a consistent texture to facilitate safe swallowing.

Since [petitioner] initiated the recommendations from the MBS, she has demonstrated increased weight gain, and increased ease of oral feeding. If she and her caregivers are not supported in their attempts to optimize her oral feeding and minimize her risk for aspiration she is likely to have further respiratory and nutritional deterioration, including a significant risk for dehydration, which could result in repeated hospitalizations.

Apparently she has recently been refused reimbursement for the Thick-It. This is a medically necessary item, with a formal prescription from a physician. In addition, it is an item that has been covered for other patients in the past.

There is no evidence controverting the above assessments that the product sought is medically necessary for the petitioner and that a non-commercial substitute will not adequately meet that medical need.

ORDER

The Department's decision is Affirmed.

REASONS

Medicaid Manual § M810 provides as follows:

Prescribed Drugs

Payment may be made for any preparation, except those unfavorably evaluated, either included or approved for inclusion in the latest edition of official drug compendia: the U.S. Pharmacopoeia, the National Formulary, the U.S. Homeopathic Pharmacopoeia, AMA Drug Evaluations, or Accepted Dental Therapeutics. These consist of both "legend" drugs, for which a prescription is required by State or Federal law, and "over-the-counter" medicinals, normally purchasable without a prescription. The only exceptions to this are specified in Sections M811.1-M811.4

(Emphasis added.)

The Department maintains that products are excluded under the following provision in §M811.1, which provides as follows:

Non-Drug Items

No payment will be made for the following items:

...

Food products and food supplements; (payment may be made for food supplements [e.g., Sustacal) in cases where a persons nutritional needs can only be met by a liquid high-protein diet. Prior authorization from the Division of Medical Services is required).

...

In this case, although the medical evidence is clear and uncontroverted that the petitioner's nutritional needs and overall health would be severely jeopardized if she is not able to obtain a commercial food thickener, ⁽¹⁾ the Board concludes that food thickeners are "food supplements" under § M811.1, supra, which do not fall under the parenthetical exception in that regulation that applies to "liquid high-protein diet". Thus, it is excluded from coverage, and the Department's decision is affirmed. 3 V.S.A. § 3091(d); Fair Hearing Rule No. 17.

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1. The Department maintains, however, that the petitioner's community care home provider is required to provide this product as part of the petitioner's meal preparation.